

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

GMC REAL ESTATE, LLC,

Plaintiff,

v.

CIVIL ACTION NO. 2:21-cv-00151

AMGUARD INSURANCE COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

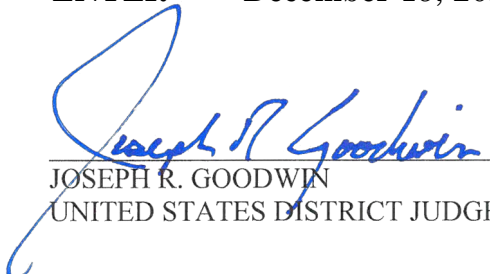
Pending before the court is Defendant AmGUARD Insurance Company's ("AmGUARD") Motion for Leave to Amend Answer. [ECF No. 57]. Pursuant to Rule 15(a)(2) and Rule 16(b)(4) of the Federal Rules of Civil Procedure, AmGUARD requests leave to file an amended answer that "assert[s] additional coverage defenses and related claims for declaratory judgment that have just come to light in this matter." *Id.* at 1.

Federal Rule of Civil Procedure 15(a)(2) states that leave to amend a pleading should be "freely give[n] . . . when justice so requires." However, this motion to amend was filed on December 16, 2022, after the December 22, 2021, deadline for amendment of pleadings set in the Scheduling Order. [ECF No. 9]. "Once the scheduling order's deadline for amendment of the pleadings has passed, a moving party first must satisfy the good cause standard of Rule 16(b). If the moving party

satisfies Rule 16(b), the movant then must pass the tests for amendment under Rule 15(a).” *Marcum v. Zimmer*, 163 F.R.D. 250, 254 (S.D.W. Va. 1995). “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Id.* (internal quotation marks omitted). In other words, “the touchstone of ‘good cause’ under Rule 16(b) is diligence.” *Id.* at 255.

Finding good cause to amend, no apparent lack of diligence on behalf of Defendant AmGUARD, and that amendment is in the interest of justice, the court hereby **GRANTS** the motion [ECF No. 57]. AmGUARD is directed to file an amended answer within 14 days of entry of this order. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 19, 2022



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE